iaries. Thus, a sole beneficiary under the death act may make a valid release of her right. *McKeigue* v. *Chicago & N. W. R. R. Co.*, 130 Wis. 543, 110 N. W. 384. But where there are several beneficiaries, a release by one cannot affect the rest, so that a widow who accepts a relief benefit in satisfaction of her claim for the death of her husband, does not thereby release the claims which her children may have had, and she may sue as administratrix for the loss which the children have sustained. *Chicago, B. & Q. R. R. Co.* v. *Wymore*, 40 Neb. 645, 58 N. W. 1120; *Chicago, B. & Q. R. R. Co.* v. *Healy* (Neb.), 111 N. W. 598. E. R. S.

THE POWER OF A CITY TO ACQUIRE OR BUILD SUBWAYS.—At the present time, when questions of municipal control and ownership of public utilities are receiving so much attention, the struggles of a great city like Chicago to secure control and provide for the future ownership by the city of its street railway system, if that shall be advisable, cannot fail to be of interest to all. One more chapter is added to the history of this struggle by a recent decision of the Supreme Court of Illinois in the case of *Barsalaux et al.* v. *City of Chicago et al.*, decided June 29, 1910, and reported in 92 N. E. 525, affirming the decision of Judge GEORGE A. CARPENTER, then of the Cook County Circuit Court, now Judge of the United States District Court for the Northern District of Illinois.

Action was brought in this case by a citizen and taxpayer of the city of Chicago against the city and certain of its officers to have the general appropriation ordinance of March 8, 1909, declared unconstitutional and void and for an injunction restraining the defendants from taking any further steps or incurring further expense in connection with the preliminary subway project in harmony with the provisions of two ordinances passed by the city council on February 11, 1907, granting franchises to Chicago City Railway Company and Chicago Railways Company which authorized these corporations to construct, maintain and operate street railway systems in the city of Chicago. At the time of the passage of these ordinances the franchises of several of the corporations owning and operating lines of street railway in the city had expired or were about to expire, the system of street railways as a whole was disintegrated and the equipment antiquated and delapidated. The purpose of these ordinances was to secure for the city the immediate improvement and rehabilitation of its street railway system by private companies, subject to a large control by, and a profit-sharing arrangement with, the city, and to provide for the future acquirement of the system by the city itself should such a step be deemed advisable by the citizens of Chicago. The appropriation ordinance of March 8, 1909, was attacked on the ground that it provided for the appropriation of the sum of fifty thousand dollars out of the amount to be paid to the city of Chicago by the Chicago City Railway Company and the Chicago Railways Company under the ordinances of February 11, 1907, for bearing the expenses of an investigation and report as to the desirability of constructing subways as provided by the said ordinances, and twenty-five thousand dollars out of the

general funds to pay the salary of the Secretary of the Committee on Local Transportation and to bear the expenses of the committee for the employment of legal and engineering experts on elevated railroads, street railways and subways and for printing, postage and supplies. The complainant's contention was that the city did not have the power to purchase or construct a system of subways for street railways under the public streets of the city and consequently did not have the right or power to expend money from either the special traction fund or the general corporate funds of the city in furtherance of such purposes.

The question as to the right or power of the city to purchase or construct a street railway system was not raised by the complainant. This right and power is unquestionably given the city by an act of the legislature, entitled "An act to authorize cities to acquire, construct, own, operate and lease street railways, and to provide the means therefor," approved May 18, 1903, and popularly known as the Mueller law. This act, as its title suggests, expressly empowers every city in the state to purchase or construct street railways within its corporate limits. Granting this right to the city of Chicago, the question arose whether the statute included subways under the designation "street railways."

The term "street railway" has been variously defined. In the cases defining it, a street railway has been distinguished from an interurban railroad, *Hanna* v. *Metropolitan Street Railway Co.* (1899), 81 Mo. App. 78, and from a railroad for general traffic, *Funk* v. *St. Paul City Ry. Co.* (1895), 61 Minn. 435, 52 Am. St. Rep. 608; *Louisville & Portland R. R. Co.* v. *Louisville City Ry. Co.* (1865), 2 Duvall (Ky.) 175. This distinction has not always been based on the motive power used but rather on the service rendered. *Williams* v. *City Electric Street Ry. Co.* (1890), 41 Fed. 556. But statutes defining the term "street railway" have frequently made motive power one of the tests. Rev. Laws Mass. 1902, p. 978, c. 111, sec. 1; Cobbey's Ann. St. Neb. 1903, sec. 10,089. The distinctive feature of a street railway is said to be that it is a railway for the transportation of passengers and not of freight. ELLIOTT, ROADS AND STREETS, Ed. 2, § 733, and cases there cited. The courts have held that elevated railroads in city streets are to be regarded as "street railways" since they are operated for the public convenience and facilitate travel on and along the streets. *Doane* v. *Lake Street Elevated R. R. Co.* (1896), 165 Ill. 510, 46 N. E. 520, 36 L. R. A. 97, 56 Am. St. Rep. 265; semble *People's Rapid Transit Co.* v. *Dash* (1890), 125 N. Y. 93. And underground railways, or subways under the streets of a city have been held to be within the meaning of the term "street railways." *In re Application of New York District Ry. Co.* (1887), 107 N. Y. 187. The construction of this term has not been uniform and it seems that when courts have been called upon to construe it they have been guided largely by the context, and the general intent of the statute in which it appears in reaching a conclusion as to its meaning. It is indisputable that this is the proper course to pursue, and granting this, one is driven to concede that the conclusion of the court that the words "street railways," as used in the Mueller law, include railways constructed in subways beneath a street as well as those constructed on

the surface of a street or elevated above it is correct. It seems clear that the purpose of the Mueller law was to enable the cities of Illinois to provide adequate transportation facilities for their citizens within their corporate limits. If this was the intent of the legislators, the question then resolves itself into an inquiry as to whether subways are necessary or advantageous to a successful solution of the transportation problem in Chicago. This is a legislative or administrative, rather than a judicial question. The expenditures which the complainant here sought to enjoin were not really for the construction of subways but were for the procuring of accurate information, data, etc., to assist the council and the citizens in answering the question above stated. In the judgment of the council and of the citizens of Chicago who approved the traction ordinances at the April election, 1907, the necessity for subways was great enough to warrant an investigation into their practicability in connection with the street railway system of the city. This being the situation and there not being a clear case of misjudgment, the court would scarcely be expected to overturn the conclusions of the council as to the advisability of the expenditures. G. S.

CONSTITUTIONALITY OF LEGISLATION DESIGNATING TIME AND MANNER OF PAYMENT OF WAGES.—Not infrequently the legislatures of various states have deemed it advisable to provide by law for the time and manner of payment of wages of men engaged in certain designated employments; and these laws have been the cause of considerable litigation. Their validity has been challenged mainly on the ground of deprivation of property without due process of law and denial of the equal protection of the law, the contention being that the refusal of the privilege of contracting for the manner and time of payment is a deprivation of liberty and property, and the classification of men in certain sorts of work as being subject to the provisions of the statutes while others were not is a denial of the equal protection of the law. The conclusions of the courts have not been entirely harmonious, and while many of the decisions may be reconciled or explained on one ground or another, chiefly the wording of the particular statutes involved, not all of them may be disposed of in that way. Because of this lack of harmony the decision of the New York Court of Appeals in *New York Cent. & H. R. R. Co.* v. *Williams*, 92 N. E. 404, is of especial interest.

In that case the court considered the constitutionality of certain portions of the New York labor law, the sections in controversy being in part as follows: "Sec. 10. Cash Payment of Wages. Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the state or municipal corporation thereof, either as a contractor, or a subcontractor therewith, shall pay to each employé engaged in his, their or its business the wages earned by such employé in cash. No such company, person, firm or corporation shall hereafter pay such employés in script, com-